

MEDICARE PAYMENT ADVISORY COMMISSION

PUBLIC MEETING

Ronald Reagan Building  
International Trade Center  
Horizon Ballroom  
1300 13th Street, N.W.  
Washington, D.C.

**Thursday, September 12, 2002**  
**10:14 a.m.**

COMMISSIONERS PRESENT:

GLENN M. HACKBARTH, Chair  
ROBERT D. REISCHAUER, Ph.D., Vice Chair  
AUTRY O.V. "PETE" DeBUSK  
NANCY ANN DePARLE  
DAVID DURENBERGER  
ALLEN FEEZOR  
RALPH W. MULLER  
ALAN R. NELSON, M.D.  
JOSEPH P. NEWHOUSE, Ph.D.  
CAROL RAPHAEL  
ALICE ROSENBLATT  
JOHN W. ROWE, M.D.  
DAVID A. SMITH  
RAY A. STOWERS, D.O.  
MARY K. WAKEFIELD, Ph.D.  
NICHOLAS J. WOLTER, M.D.

## **AGENDA ITEM: Choice of SNF services in Medicare+Choice**

**-- Tim Greene**

MR. GREENE: Good afternoon. I'll be discussing we were addressing in a mandated report to Congress and our plans for the report which is due at the end of this year. Approximately 2 million Medicare beneficiaries lived in long term care facilities in 2000. Of these, 64 percent were in nursing homes and 7 percent were in continuing care retirement communities, CCRCs. Almost 60 percent of the CCRC residents lived in communities which offered skilled nursing facility services.

Most Medicare+Choice plans require that member receive care from providers with which the plans have contracts. Plan members who reside in CCRC or nursing facilities may require post-hospital care. In such cases, the member might prefer placement in a SNF on the campus of the retirement community in which they lived or in one in which they resided before hospitalization. However, the plan may require that a beneficiary receive care from a specific facility in its network of contract providers.

Disagreements between managed care organizations and managed care plan members with regard to post-hospital SNF placement have arisen in several states. For example, a plan required that a resident of a Jewish retirement community go to a non-sectarian home after hospitalization. This led her retirement community to prepare kosher meals and deliver them to her at the SNF where she was placed. The state responded by enacting a law providing residents of continuing care retirement communities and assisted living facilities a right to return to a SNF operated by their community or facility. Under the law, a resident of a CCRC may sue a plan if it refuses payment to a SNF not in its network.

Controversies such as this have led New York, California, and other states to enact laws addressing choice of nursing facility. Your briefing material presents the text of these laws, which is similar to those in other states. These statutes typically apply to managed care members residing in retirement communities or nursing facilities and relate to post-hospital referral, to payment, or both.

In the Medicare Benefits Improvement and Protection Act of 2000, BIPA, the Congress established similar rights for members of M+C plans. Beneficiaries are assured of choice of SNF upon discharge if they resided in a SNF before admission, if the nursing facility is a CCRbased SNF and is located at the community in which they lived before hospitalization, or if their spouse resides in the nursing facility at the time they are discharged from the hospital. Plans must pay these SNFs at rates consistent with the payments they make to nursing facilities with which they contract.

BIPA requires that MedPAC evaluate the impact of the choice provision. Reports from nursing home and retirement community managers and representatives of long term care facility organizations suggest that the problem addressed by the BIPA provision occurs infrequently. In light of the infrequency of the problem and the implementation of the provision after

December 21st, 2000 we would not expect to identify many cases. In addition, CMS data does not identify Medicare+Choice members who use CCRC or SNF services.

BIPA requires that we examine the impact of the law and the scope of additional benefits offered by M+C plans, and on financial, administrative, and other effects on plans. That is, the report is to address the effects on plan, not on nursing facilities or CCRCs.

We're interviewing nursing home, retirement community and plan officials at this time to learn about the impact of state laws and the BIPA provision on M+C plans. We'll present information on the early effects of the BIPA provision. We'll provide you with a draft report at the November meeting for delivery to Congress by December 22nd.

That's my brief overview of the report which is in process. I'll take any questions or any thoughts on where we might go or where we should focus.

MR. HACKBARTH: Questions? It sounds like this should be fairly straightforward.

DR. REISCHAUER: This strikes me as one of these ones which an economy of resources would be the prudent attention that the commissioners and the staff paid to this one.

MR. FEEZOR: Tim, just one question. The obligation in the states for the plan to pay, even though it's not a network facility, I assume that obligation would begin after the release from the hospital. In other words, as opposed to any of the time that that spot in that SNF would have been required to have been maintained while that person was in the hospital.

MR. GREENE: Yes, as far as I understand, as far as I read both the state and BIPA language it would work that way.

MR. HACKBARTH: Okay, thank you.